IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1477 of 1997
in
SPECIAL CIVIL APPLICATION No 3322 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

and

Hon'ble MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? :

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KANTIBHAI NANUBHAI PATEL & ORS

Versus

THE URBAN LAND TRIBUNAL,

Appearance:

MR BS PATEL for Appellants.

Ms.Harsha Devani, ASSTT GOVERNMENT PLEADER for Respondent No. 2-3

Mr.M.R. Shah for CBI (CBI, under directions of this Court in SCA No.3322/94 submitted its report).

CORAM : MR.JUSTICE M.R.CALLA
and
MR.JUSTICE RAVI R.TRIPATHI

Date of decision: /09/2001

C.A.V. JUDGEMENT (Per : MR.JUSTICE RAVI R.TRIPATHI)

The present Letters Patent Appeal is filed by Kantilal Nanubhai Patel and another, original petitioners in Special Civil Application No.3322 of 1994 being aggrieved of the judgement and order passed by the learned Single Judge in the said petition dated 19.9.1997. Mr.Patel, learned advocate appearing for the appellants submitted that the order of the learned Single Judge is in two parts. In the first part the learned Single Judge has recorded that,

'Mr.S.V. Bachani, advocate for the petitioner had stated that he had appeared at notice stage and thereafter his junior, Mr.K.K. Trivedi had appeared at the time when rule was issued and then papers were taken away by Mr.K.K. Trivedi, which fact is recorded in the order dated 27.8.1997. It is thereafter that Mr.Bachani filed an affidavit dated 12.9.1997 in which it is stated that the papers were handed over to Mr. Jariwala, the other advocate on record. Said Mr.Jariwala has also filed an affidavit stating that the papers were taken away from him, as stated by him in his telegram dated 20.8.1997 about one and half years ago, with a view to engage Mr.P.M. Thakkar. Mr.P.M. Thakkar was required by order dated 27.8.1997 to file a Note dated 16.9.1997 wherein it is stated that, "Having gone through his office record he is unable to find any such matter in which he is said to have been engaged by the petitioners of this petition.'

The Court has also recorded that,

'Petitioner no.2, Ratilal Nanubhai Patel, was present and stated that the other petitioner, Kantilal Nanubhai Patel has gone abroad. He further stated that he leaves the matter on the Court to render decision in this petition.'

Thereafter, the Court requested Mr.M.C. Shah, learned advocate who was present representing Mr.Jariwala (the

advocate on record for petitioners) to assist the Court in the hearing of the petition and he was good enough to argue the petition for the petitioners. Relevant portion of para 3 of the judgement is reproduced for ready perusal:

"At the hearing of this petition, the learned counsel Mr.Jariwala, who along with learned counsel Mr.Bachhani had filed this petition, has submitted that the papers were taken away from him by the petitioners. The learned counsel Mr.Bachhani had, on an earlier occasion when the matter was called out on 27.8.1997 stated that he had appeared at notice stage and thereafter, his junior Mr.K.K. Trivedi had appeared at the time when rule was issued and then the papers were taken away by Mr.K.K. Trivedi, which fact is recorded in the order dated 27.8.97. An affidavit dated 12.9.1997 has been filed by Mr.Bachhani to this effect, in which it is stated that the papers were handed over to Shri Jariwala, the other advocate on record. Mr.Jariwala has filed an affidavit stating that the papers were taken away from him as stated by him in his telegram dated 20th August 1997 about one and a half years back, with a view to engage Mr.P.M. Thakkar. Mr.P.M. Thakkar, on being required by order dated 27.8.97 has filed a note dated 16.9.97, stating that having gone through his office record, he is unable to find any such matter in which he is said to have been engaged by the petitioners of this petition.

The petitioner no.2 is present and states that the other petitioner Kantilal has gone abroad. he has stated that he leaves the matter on the Court to render decision in this petition. Therefore, Mr.M.C. Shah who was present representing Mr.Jariwala, was requested to assist the Court in the hearing of this petition and he has been good enough to argue the petition for the petitioners."

2. Learned Single Judge then considered the submissions made by learned advocate for the petitioners on merits. Learned Judge while considering the contentions raised by learned Assistant Government Pleader appearing for the respondent authorities recorded that the petition was filed in the year 1994, challenging the impugned order made in 1989. It was, therefore, contended by the learned Assistant Government Pleader

that the same is grossly delayed and should not be entertained. It was then contended by learned Assistant Government Pleader that the notification under sections 10(1) and 10(3) has been issued and the lands have vested in the Government free from all encumbrances. It was next contended by learned Assistant Government Pleader that Appeal No.141 of 1994 was filed by petitioner no.1 against the orders which are challenged in this petition. Therefore, the petitioners having availed alternative and efficacious remedy are not entitled to maintain this petition. What follows next is important. Learned Assistant Government Pleader stated that in Appeal No.141 of 1994 filed before the Urban Land Tribunal, a xerox copy of certified copy of the judgement, said to have been delivered on 13.9.1995 in the present petition was produced, though the present petition was pending and no such judgement was ever delivered. It was submitted that since no one except the petitioners were to benefit by filing a forged judgement in the name of this Court, these petitioners should be held to be the persons who are not fit to carry writ of this Court. Para 4 of the judgement is reproduced for ready perusal in toto as it records in detail as to how a xerox of copy of certified copy of the judgement said to have been delivered on 13.9.1995 in the Special Civil Application No.3322 of 1994 was produced on the strength of which Urban Land Tribunal remanded the matter by its order dated 23.7.1996 and directed the subordinate authorities to proceed further as per the decision of the High Court. Learned Judge has also recorded that as per the record of the office of the Government Pleader and even according to learned counsel who appeared for the petitioners no such decision was ever rendered by this Court and the petition was pending. Even as per petitioner no.2 who was present before the learned Judge stated that he was not aware of the petition having been already decided.

"4. The learned Government Pleader appearing for the respondent authorities contended that the petition filed in 1994 for challenging the impugned order made in 1989 was grossly delayed and should not be entertained. It was also submitted that notifications under section 10(1) and 10(3) have been issued and the lands have vested in the Govt. free from all encumbrances. It is further argued that Appeal No.141/ 94 was filed by the petitioner no.1 against the orders which are challenged in this petition. The petitioners having challenged the impugned orders before the Tribunal and having availed alternative and efficacious remedy are not

entitled to maintain this petition. It is also stated that in the Appeal No.141/ 94 which the petitioner had filed before the Urban Land Tribunal, a xerox copy of a certified copy of judgement said to have been delivered on 13.9.1995 in the present petition was produced, though the present petition has all along been pending and no such judgement was ever delivered. It was submitted that since no one except the petitioners were to benefit by filing a forged judgement in the name of this Court, these petitioners should be held to be persons who are not fit to carry the writ of this Court. It is submitted that it is because of the alertness of the competent authority and the Deputy Collector, Surat, who addressed a letter dated 21.4.1997 to the Govt. and endorsed to the learned Govt. Pleader and the High Court a copy of which is placed on record, that it could be found out that no such judgement was delivered in this petition and that it was still pending. The learned Govt. Pleader submitted that therefore, enquiries were made and it was found that in the appeal which was filed against the impugned notice dated 21.2.1994 before the ULT, a xerox copy of a purported certified copy of judgment said to have been delivered in this writ petition on 13.9.95 was produced, on the strength of which the ULT remanded the matter by its order dated 23rd July 1996, stating that keeping in view the decision of the High Court dated 13.9.95, the proceedings were closed and the subordinate authority was directed to proceed further as per the decision of the High Court. There is no dispute about the fact that no such decision was ever rendered by this Court and this petition has been pending as per the record of the High Court, the computer slip and also as per the record of the office of the learned Govt. Pleader and even according to the learned counsel who appeared for the petitioners. Even the petitioner no.2 who is present, stated that he was not aware of the petition having been already decided. The learned Govt. Pleader therefore, submitted that the petitioners are not fit persons to be entrusted with the writ of this Court and the petition should be dismissed on the ground that they have indulged in such malpractices."

3. The learned Single Judge after taking into consideration the contentions raised on behalf of the

petitioners about pendency of the application under sec.20 of the Urban Land (Ceiling and Regulations) Act, 1976 (hereinafter referred to as "ULC Act") and that during pendency of such application, the land in question could not have been declared excess, were considered in light of the judgment of the Apex Court in the case of Smt. Darothi Clare Parrieira and others v. State of Maharashtra and others reported in AIR 1996 SC 2553 The learned Single Judge held that even on merits the petitioners have no case at all. Therefore, the petition deserves to be rejected. The learned Single Judge ordered for discharge of rule with no order as to costs.

4. In the second part of the judgement the learned Judge while dismissing the writ petition issued certain directions for investigation of the matter by CBI and some directions to the State Government to see that similar incidents are not repeated in future.

5. Mr.B.S. Patel, learned advocate appearing for the appellants submitted that in view of the aforesaid incident of production of xerox copy of certified copy of the judgement which was said to have been delivered on 13.9.1995 in Special Civil Application 3322 of 1994 (the present petition) and in view of the fact that Mr.Jariwala, Advocate who was representing the petitioners was not present before the learned Single Judge, he may be allowed to urge all the points raised in the petition while arguing this appeal. Mr.Patel submitted that his clients are innocent and that the submissions made by learned Assistant Government Pleader that 'since no one except the petitioners were to benefit by filing a forged judgement in the name of this Court, these petitioners should be held to be persons who are not fit to carry writ of this Court', have caused prejudice to his clients. He also submitted that the matter requires to be examined on merits so as to do substantial justice to his clients. This Court permitted Mr.Patel to raise all the contentions. Mr.Patel submitted that the facts of the present case are as under:

6. The petitioners' father filed Form No.1 under sec.6 of the ULC Act before the competent authority declaring the properties as holding by him, the details of which are set out in para 2 of the petition. The competent authority served final statement to petitioner no.1 vide order dated 18.9.1987 a copy of which is produced at Annexure 'A' to the main petition. As the father of the petitioners had expired, final statement was served upon the petitioners. The property mentioned

at clause (a) in para 2 of the petition was in agricultural zone and was used for agricultural purpose and therefore, the same was exempted from the holding of the petitioners. While so far as the property which was mentioned at clause (b) of para 2 of the petition bearing Revenue Survey No.71 of village Nana Varchha admeasuring 11736 sq. meters, was sanctioned for the housing scheme for socially and economically weaker sections of the society under sec.21(1) of the Act vide order dated 23.3.1980. A copy of the said order was also produced at Annexure 'B' to the main petition. It is in respect of this property that the development permission was granted by the District Development Officer on 15.9.1980 and by the same order non agricultural use, under sec.65 of the Bombay Land Revenue Code, 1879 was also granted. The petitioners had given a public notice for inviting allotment of the houses for economically weaker sections in daily newspaper, Gujarat Mitra dated 21.2.1980 and also in daily newspaper, Pratap dated 23.2.1980 and had allotted plots to the applicants. The petitioners commenced construction according to the sanctioned plan and the scheme. In the year 1981, Surat Urban Development Authority was constituted under the Gujarat Town Planning and Urban Development Act, 1976 for development and control in urban areas of Surat and therefore, the petitioners had to construct a building according development control regulations of Surat Urban Development Authority (SUDA) and has to cause deviation from the sanctioned scheme. The petitioners submitted an application for development permission with plans to SUDA and the matter is pending in SUDA. It was submitted that in respect of the aforesaid fact, respondent no.2 cancelled the scheme under sec.21 (1) on the ground that the petitioners have caused deviation in construction from the approved scheme for profit making purpose, by order dated 31.3.1984. The petitioners aggrieved of that order preferred an appeal before respondent no.1 being Appeal No.810 of 1984. Said Appeal was rejected by respondent no.1 by order dated 21.11.1987, a copy of which is also produced at Annexure 'C' to the main petition.

7. Mr.Patel submitted that competent authority, respondent no.2 considered the land bearing survey no.80/2 and 91/1 in the holdings of the petitioners, without considering the fact that the lands are actually used for agricultural purpose and even in the final order issued by respondent no.2 dated 18.9.1987 it is stated that the lands are actually used for agricultural purpose, and though it was not necessary for the petitioners to make an application for exemption under

sec.20 as the lands were used for agricultural purposes. The petitioners had given application under sec.20 and prayed for exemption under sec.20. The petitioners had also made a reminder dated 10.6.1998, a copy of which is produced at Annexures E-1 to E-2 of the petition. Respondent no.2 issued final order dated 20.9.1987 and declared the said agricultural lands as vacant lands (Annexure 'A' to the main petition). Mr. Patel submitted that the petitioners preferred an appeal before respondent no.1 being Appeal No.164 of 1987. Said Appeal was rejected and order passed by respondent no.2 was confirmed by respondent no.1, by order dated 16.12.1989. Mr.Patel submitted that the petitioners were waiting for final order from respondent no.3, the State Government for their application at Annexure E-1 (exemption application under sec.20), which according to the petitioners have not received any final reply and that the said application is not finally disposed of by respondent no.3-- State. Mr.Patel submitted that as the petitioners were legally entitled to hold the said lands and that they had every chance of succeeding in the said application (Annexure E-1, application under sec.20), the petitioners did not challenge the order of the Tribunal dated 16.12.1989 (Annexure 'F' to the petition). Mr.Patel submitted that it was only when respondent no.2 issued an order dated 21.2.1994 and notice for taking possession of lands, including of agricultural lands and other lands and even the erstwhile units, the petitioners approached this Court by filing the petition wherein order dated 21.2.1994 is produced at Annexure 'G' to the petition.

8. It may be noted here that the petitioners have not mentioned about filing of an appeal before the Urban Land Tribunal against the order dated 21.2.1994 being Appeal No.141 of 1994 in which a xerox copy of the certified copy of the judgement, said to have been delivered on 13.9.1995 in Special Civil Application No.3322 of 1994, i.e. the present petition, was produced, which is referred to by the learned Single Judge in para 4 of his judgement. It is also required to be noted that though the petition, Special Civil Application No.3322 of 1994 was filed in the month of May 1994, the petitioners have not stated the facts which are set out in para 10 of the affidavit in reply filed by the Competent Authority & the Deputy Collector (ULC), respondent no.2. For ready perusal, para 10 of the affidavit in reply is reproduced which will show that important material facts were suppressed by the petitioners from this Court while approaching under its extraordinary discretionary jurisdiction under Article

226 of the Constitution of India.

"10. It is submitted that thereafter, notification under sec.10(1) of the Act was published in the Govt. Gazette on 10th June 1993 and the notification under sec.10(3) of the Act was published in the Govt. Gazette on 2nd September 1993. Copies of the notifications published on 10.6.93 and 2.9.93 are annexed herewith and marked as Annexure I & II respectively. It is further submitted that thereafter, notice under se.10(5) of the Act was issued on 21st February 1994, whereby the land holder was informed to remain present on the site on 28th February 1994, either personally or through his authorized agent to hand over the possession of the land. it is also stated in the aforesaid notice that the competent authority and Deputy Collector, ULC, Surat has been authorized to take over the possession of the excess vacant lands shown in the notice. Pursuant to the aforesaid notice ex parte possession of the excess vacant land was taken on 28th February 1994 and presently also the land is in the possession of the State Govt. A copy of the notice dated 21.2.94 has been annexed to the petition as Annexure 'G'. Annexed herewith an marked as ANNEXURE III is a copy of the communication dated 4th March 1994 of the Competent Authority and Deputy Collector, Surat informing the Addl. Collector, ULC dealing with matters pertaining to sec.23 of the Act, regarding the taking over of the possession of the lands in question. It is submitted that the Central Bureau of Investigation has taken the custody of the original record of the competent authority, pertaining to the present case, hence for the time being it is not possible to place on record other documents with respect to taking over of the possession of the lands in question."

9. Mr.Patel for the appellants contended that the learned Single Judge had seriously erred in proceeding with the matter while in fact on 19.9.1997 business of the land case had not been allotted to him and hence the order is without jurisdiction.

10. This contention is stated, only to be rejected outrightly. Every Judge of the High Court is a Judge of that Court. Allotment of business is a matter of procedure and that does not divest the Judge of his

jurisdiction. If a matter is listed before a Judge by the Registry and he proceeds to hear the matter, it can hardly be said that he has exceeded the jurisdiction. As a matter of fact we strongly feel that the practice of raising such objections by parties deserves to be deprecated.

11. Mr.Patel submitted that the learned Single Judge erred in not considering the averments made before the Tribunal regarding construction made by the appellants on the land in question more particularly, when it was the contention of the Competent Authority like SUDA that the construction has not been made as per the approved plan. The submission of Mr.Patel is devoid of any merit inasmuch as the learned Single Judge has recorded in para 3 of the judgement as under :

> "It is contended for the petitioners that on survey no.71, already construction has taken place and 350 persons are at present residing. There is nothing on record to show that any such construction exists there. The learned counsel is not in a position to show as to when such construction took place. The question involved in this petition is whether that land was rightly treated as part of the holding of the petitioners while computing vacant land at the relevant time and that cannot be decided on the basis of any subsequent unauthorised constructions."

12. Besides, in the affidavit in reply the competent authority has stated in para 4 about the land bearing survey no.71, which reads as under :

> "It is submitted that so far as the lands of survey no.71 are concerned, the competent authority had by an order dated 23rd Feb. 1980 under the provisions of sec.21(1) of the Act sanctioned the scheme for construction of dwelling units for the accommodation of the weaker sections of the society, hence the aforesaid land were declared not to be excess land for the purposes of Chapter III of the Act, and the landholder was permitted to continue to hold the same subject to the conditions stated in the order. It is submitted that thereafter since the landholder had contravened certain conditions subject to which the permission had been granted the competent authority had issued a show cause notice dated 29th Nov. 1983. Pursuant to the

aforesaid show cause notice the appellants appeared through their advocate and had filed their reply on 10th January 1984. Thereafter, two adjournments were granted for the purpose of producing evidence. However, on the second date it was informed that except for what was stated in the reply they had nothing more to say. It is submitted that thereafter by an order dated 31st March 1984 the competent authority cancelled the order dated 23rd February 1980 whereby the scheme had been sanctioned under sec.21 of the Act and declared the said lands to be excess land."

13. It is further stated in para 5 that against the aforeaid order dated 31.3.1984, the petitioner had preferred an appeal before Urban Land Tribunal under sec.33 of the Act as Appeal No.810 of 1984. Said appeal was dismissed by an order dated 21.11.1987 and the order of the competent authority was confirmed. A copy of the order of the Urban Land Tribunal dated 21.11.1997 is produced at Annexure 'C' to the petition and was sought to be challenged in the present petition, which was filed in the year 1994 and for the delay in question no explanation is given. On the ground of delay itself the challenge to the said order of the Urban land Tribunal dated 21.11.1997 must fail.

14. Mr.Patel, learned advocate submitted that the learned Single Judge has erred in dismissing the Special Civil Application on the ground that the appellants had challenged the order before the Tribunal in 1994 and therefore, the appeal had been grossly delayed, while in fact the Urban Land Tribunal has dismissed the appeal on merits also. Mr.Patel could not clarify as to which appeal he is referring to, that is dismissed on merits by the Urban Land Tribunal. In fact, after the final order dated 20.9.1987 passed by the competent authority, respondent no.2, the petitioner preferred an appeal before respondent no.1 being Appeal No.164 of 1987 and in the said appeal, order passed by the competent authority was confirmed by an order dated 16.12.1989. This order dated 16.12.1989, is at Annexure 'A' to the main petition and the petitioners have prayed for the reliefs in subpara 2 of the para 12 as under :

"12(2) Be pleased to issue writ of mandamus or any other appropriate writ or writ orders or orders or directions quashing the order issued by Honorable Tribunal dtd. 24.12.1989 at Annexure F and order dt.14.2.1994 Annexure G issued by

respondent no.2. Further it may please be ordered that petitioners are not holding any excess land. Further it may please be ordered that petitioners are entitled for exemption under 20 of the said Act for the agricultural purposes for land bearing Revenue Survey no.80/2 and 91/1 of village Nana Varachha Ta. Choryasi Dist. Surat."

15. The petitioners have not stated in the petition anything about filing of an appeal before the Urban Land Tribunal being Appeal No.141 of 1994. It was only by affidavit in reply, in para 13, that fact of filing of appeal against notice dated 21.2.1994 under sec.33 of the Act was placed on record, which is recorded by the learned Single Judge in para 4, in which a xerox copy of the certified copy of the judgment said to have been delivered on 13.9.1995 in Special Civil Application No.3322 of 1994, was produced. In that view of the matter the contention raised by Mr.Patel is devoid of any merits and warrants an outright rejection.

16. The next contention of Mr.Patel that the learned Single Judge has seriously erred in dismissing the Special Civil Application on the ground that after the order of the Tribunal the appellants have filed the petition after more than three years; that is how it is grossly delayed, is also without any merits inasmuch as the appeal filed before the Urban Land Tribunal being No.810 of 1984 was dismissed on 21.11.1987, a copy of which is produced at Annexure 'C' to this petition, stay of which is prayed for in subpara (4) of para 12 of the petition as an interim direction.

17. Mr.Patel also submitted that the learned Single Judge as seriously erred in passing the order dated 14.8.1989. It was declined by ULT that it is nothing on record to show that any application for exemption was made. In fact, the application for exemption has already been annexed to petition 10.6.1988, which was in pursuance to the earlier application submitted by the appellants and that had never been denied by the respondents. Mr.Patel was also to point out as to whether he has anything to show that the petitioners had produced either a copy of the application dated 10.6.1988, Annexure 'E' to the main petition or a copy of the application dated 8.7.1988, a copy of which is at Annexure E-1 to the petition before the Tribunal so as to substantiate that the Tribunal was not right in its order dated 14.9.1989 in recording that,

"There was nothing on record to show that any such application was made in respect of Survey Nos.80/2 and 91/1 as alleged by the petitioners"

Mr.Patel was not in a position to substantiate the same except emphatically submitting that the competent authority in its reply has not denied the said contention raised in para 6 of the petition. Be that as it may, the fact remains that pendency of application under sec.20 of the Act is a question of fact and the finding recorded by the Tribunal in absence of any material to dismantle the same cannot be interfered with by this Court in the present proceedings.

18. Mr.Patel, learned advocate for the appellants submitted that the learned Single Judge has seriously erred in relying upon the law laid down by the Honourable Apex Court in Smt. Darothi Clare Parrieira and others v. State of Maharashtra and others reported in AIR 1996 SC 2553 (supra), while the law settled by the Honourable Division Bench of the Court is otherwise. Mr.Patel submitted that Division Bench of this Court in Letters Patent Appeal in the matter between Savitaben Ramanbhai Patel v. State of Gujarat & others, reported in 1999 (1) GLR 860, had decided that once either an application under sec.20 or sec.21 is made, so long as a decision on that application has not been taken, proceeding beyond the stage of sec.10(2) must be stayed, because there is no decision that the land is surplus. Mr.Patel submitted that the Division Bench had taken into consideration the judgement of the Full Bench of this Court in the matter between M/s Avanti Organisation v. Competent Authority & Additional Collector, Urban Land Ceiling Act, Rajkot & another, 1989 (1) GLR 586. However, Mr. Patel could not make good that the judgement of the Apex Court in the mater of Smt. Darothi Clare Parrieira and others (supra) is not applicable to the facts of the present case. Mr.Patel was also not able to throw light as to what will be the position of a judgement of this Court wherein the decision of the Apex Court was not considered as the same was not cited before the Division Bench. In view of that the submissions of Mr.Patel are devoid of any merits and the same are required to be rejected.

19. Mr.Patel in this regard relied upon a judgement of the Apex court in the matter of Rajeshkumar Verma v. state of Madhya Pradesh and others, reported in AIR 1995 SC 1421 to contend that in case the Division Bench of the High Court is not following a decision of earlier concurrent Bench decision on the ground that it had not taken into consideration the decision of the Honourable

Supreme Court on the point, the proper course in such case is to refer the matter to a larger Bench. Mr.Patel relied upon para 5 of the judgement which reads as under:

> "5. In the group of writ petitions which came up for decision before the Division Bench of the High Court, the High Court placing special reliance on this Court's decision in Director General, Telecommunication v. TN. Peethambaram came to the conclusion that it was not open to the State Government to reduce the minimum qualifying marks in General English and the seats made available to SC/ST candidates by virtue of the said relaxation would revert to the general category students. It may here be mentioned that in taking this view the Division Bench departed from the view taken by another Division Bench of the same High Court in Amrit Bajpai v. State of MP, which judgment is produced as Annexure 111 at page 42 of the paper-book. This decision was brushed aside on the plea that it had not taken into consideration the decision rendered by this Court in Peethambaram case (AIR 1987 SC 162). Needless to say that in such a situation the proper course is to refer the matter to a larger Bench, a course which the subsequent Division Bench did not follow."

20. We would have certainly considered this aspect of the matter had we found any substance in the factual submission. When we are satisfied on facts that even this much is not established on record that any such application was there, where is the question of making reference. Moreover, in the case of M/s Larsen and Toubro Limited Vs. State of Gujarat reported in AIR 1998 SC 1608, para 13 thereof is conclusive on the question that vesting is enough and with the vesting of the land possession should be deemed to have been taken.

21. Learned advocate Mr.Patel submitted that the land in question was an agricultural land and on the date of commencement of the Act, i.e. 17.2.1976 the land had never been covered under any Town Planning Scheme and only was used for agricultural purpose. Hence the provisions of ULC Act are not applicable as per the law laid down by the Honourable Apex Court in the matter of Smt.Atiya Begum v. State of U.P. and others, reported in AIR 1993 SC 2465. Mr.Patel contended that agricultural land is not included in the term "vacant land". He contended that the term "vacant land" is defined in sec.2(q) of the ULC Act, which reads as under:

"(q) "vacant land" means land, not being land mainly used for the purpose of agriculture, in an urban agglomeration, but does not included --

xxx xxx xxx "

22. Mr.Patel submitted that the term "vacant land" does not include the land which is mainly used for the purpose of agriculture. Mr.Patel contended that the land in question was mainly used for agriculture purpose as is seen from the record of the lands which is produced at Annexure 'D-6'. Mr.Patel referred to the definition of the term "Urban Land" which is defined in sec.2(o) of the ULC Act, which reads as under:

"2(o) "urban land" means, --
(i) any land situated within the limits of an urban agglomeration and referred to as such in the master plan; or

(ii) in a case where there is no master plan, or where the master plan does not refer to any land as urban land, any land within the limits of an urban agglomeration and situated in any area included within the local limits of a municipality (by whatever name called), a notified area committee, a town area committee, a city and town committee, a small town committee, a Cantonment Board or a panchayat,

but does not include any such land which is mainly used for the purpose of agriculture."

23. Mr.Patel also referred to the explanation to the said clause (o), which reads as,

"Explanation --
(A) "agriculture" includes horticulture, but does not include --
(i) raising of grass,
(ii) dairy farming,
(iii) poultry farming,
(iv) breeding of live stock, and
(v) such cultivation, or the growing of such plant, as may be prescribed.

(B) land shall not be deemed to be used mainly for the purpose of agriculture, if such land is not entered in the revenue or land records before the appointed day as for the

purpose of agriculture:

Provided that where on any land which is entered in the revenue or land records before the appointed day as for the purpose of agriculture, there is a building which is not in the nature of a farm house then, so much of the extent of such land as is occupied by the building shall not be deemed to be used mainly for the purpose of agriculture:

Provided further that if any question arises whether any building is in the nature of a farm house, such question shall be referred to the State Government and the decision of the State Government thereon shall be final;

(C) notwithstanding anything contained in cl.(B) of this Explanation, land shall not be deemed to be mainly used for the purpose of agriculture if the land has been specified in the master plan for a purpose other than agriculture:"

24. Mr.Patel submitted that as provided in Explanation (C), the land shall not be deemed to be mainly used for the purpose of agriculture if the land has been specified in the master plan for a purpose other than agriculture. Mr. Patel could not point out as to whether all these factual aspects about the land being not included in the master plan or if included in the master plan were not specified for a purpose other than agriculture. Mr.Patel submitted that as per the information available to the petitioners, the High Court has issued notice on 8.3.1994 and thereafter on 8.4.1994 amendment was allowed, but then said amendment is not carried out. Therefore, the aforesaid contention does not form part of the main petition. Therefore, there is no material on record which can be taken into consideration for deciding the aforesaid contention of Mr.Patel.

25. On the other hand learned Assistant Govt. Pleader placed reliance on the affidavit filed on behalf of respondent no.2. She reiterated that in the petition filed in the year 1994, the impugned order passed in 1989 was challenged and therefore, there is a gross delay and the petition is not required to be entertained on that ground and was rightly not entertained by the learned Single Judge.

26. Learned Assistant Government Pleader also submitted that as stated in para 10 of the affidavit in reply, notification under sec.10 (1) of the Act was published in the Government Gazette on 10.6.1993 and the notification under sec.10(3) of the Act was published on 2.9.1993, both the notifications are produced at Annexures I and II respectively to the affidavit in reply. She also submitted that thereafter, notice under sec.10(5) of the Act was published on 21.2.1994 whereby the land holder was informed to remain present on 28.2.1994 either in person or through his authorised agent to hand over possession of the land. It is further stated that pursuant to the aforesaid notice ex parte possession of the excess vacant land was taken on 28.2.1994 and presently also the land is in the possession of the State Government. A copy of said communication dated 4.3.1994 is produced at Annexure III to the affidavit in reply whereby taking of possession is intimated to the Additional Collector, ULC, Surat dealing with the matters pertaining to sec.23 of the Act, by the Competent Authority & Additional Collector, Surat. It was submitted that in view of that nothing is required to be done in the matter, more particularly, in light of the the Repeal of the Main Act. Learned Assistant Government Pleader invited attention of the Court to para 12 of the affidavit in reply wherein in detail the contentions raised by the petitioners regarding survey nos.71, 80/2 and 90/1 were dealt with. Last but not least, learned Assistant Government Pleader pressed into service the averments made in paras 14 and 15 of the affidavit in reply, which read as under :

"14. It is submitted that while the aforesaid Special Civil Application was still pending, a forged order of this Honourable Court dated 13th September 1995 was produced on behalf of the appellants before the Urban Land Tribunal. It is submitted that relying upon the aforesaid forged order the Tribunal remanded the mater by an order dated 23rd July 1996, stating that keeping in view the decision of the High Court dated 13th September 1995, the proceedings were closed and the subordinate authority was directed to proceed further as per the decision of the High Court."

"15. It is submitted that the aforesaid facts regarding the forged order having been brought to the notice of the Honourable Court, the Honourable Court was pleased to decide the mater on merits and was further pleased to direct the Central Bureau of Investigation to investigate

into the offences committed by forging a judgement of this Court on 13.9.95 in Special Civil Application No.3322/94. The Hon'ble Court was further pleased to direct that the investigation should be expeditiously done and completed, preferably within one month from the date of receipt of the order. It is humbly submitted that till the C.B.I. completes its investigation this appeal may kindly not be entertained."

27. Learned Assistant Government Pleader submitted that after taking possession of the lands bearing survey nos.71, 80/2 and 91/1 of Moje Nana Varachha, mutation entry in this regard has also been made in the revenue record on 10th July 1995 being mutation entry no.1081 and that said entry also certified on 15.9.1995. Learned Assistant Government Pleader submitted that once the legal possession of the land is already taken over by the State Govt. the question of the appellants having possession of the same does not arise at all. She also submitted that the factum of possession becomes more important in light of the provisions of the Repeal Act.

28. Learned Assistant Government Pleader also submitted that during pendency of the present Letters Patent Appeal that the petitioners have filed a civil suit in the Court of learned Civil Judge, Senior Division, Surat being Regular Civil Suit No.369 of 1999, the details of which are set out in paras 18 & 19 of the reply.

29. Learned Assistant Government Pleader also pointed out that the notice dated 28.12.1998 under sec.10(5) of the Act was issued through oversight, which was withdrawn by a letter dated 5.2.1999. Copies of the said notice dated 28.12.1998 are produced at Annexure 'IV' while a copy of letter dated 5.2.1999 by which said notice is produced is at Annexure 'V'.

30. Mr.Patel, learned advocate for the appellants pointed out that as referred to by the Competent Authority in its affidavit in reply in para 19 that in Regular Civil Suit No.369 of 1999 a Commissioner was ordered to be appointed who was to visit the lands in question on 8.8.1999. Report of the said Commissioner is produced on record along with the affidavit in rejoinder dated 15.9.1999. Mr. Patel submitted that the same may be taken into consideration by this Court wherein it is stated by the Commissioner,

"Thereafter I had come to the land of Revenue Survey No.71/1 of Mauje Nana Varachha along with the Panchas (witness). On looking the above land therein the construction of residential society of Varachha society is situated wherein there are approximately about one hundred plots and construction is on all plots and persons are residing. Thereafter, I the Commissioner had come to the land of Revenue Survey No.91/1 of Nana Varachha and on looking the land the entire land is without use (lying open without use). Besides, there is no type of construction on it or any hut on it."

31. Mr.Patel submitted that in view of the said report his submission regarding putting up construction on revenue survey no.71 is substantiated.

32. Mr.M.R. Shah, learned advocate appearing for the C.B.I. submitted that as per the directions given by the Court (learned Single Judge), C.B.I., Gandhinagar investigated the matter and after investigation filed a complaint for offences punishable under sec.120(B), 420, 461, 468, 471, 380 and 193 of the Indian Penal Code read with sec.195 of the Code of Criminal Procedure against Sunil Jariwala, Advocate, Bipin Ramanlal Patel, Smt. Rannaben H. Patel, Advocate and Mukesh Natvarlal Vaidhya, Advocate's Clerk, being Criminal Case No.990/98, which is pending in the Court of learned Chief Metropolitan Magistrate, Ahmedabad.

33. We have considered the case of the parties as above. It is very clear from the discussion as above that the appellants herein have no case whatsoever. We entirely agree with the reasons given by the learned Single Judge and in our considered view the reasons given by the learned Single Judge in support of his judgement and order were sufficient to reject the petition. Although the appellants have tried to absolve themselves from the controversy with regard to the forged certified copy of the judgement of this Court, in the facts of this case, we find that the jurisdiction of the Court under Article 226 of the Constitution while hearing a Special Civil Application is extraordinary and equitable jurisdiction. If the conduct of any party is vulnerable towards allegations of forging a document, such a party even otherwise is not entitled to touch the pure fountain of justice with soiled hands. The learned Judge has observed that except the petitioners there could not be any other party to be the beneficiary of this forgery. The one who has tried or even alleged to have used a

forged judgment for the purpose of obtaining a order in his favour, cannot be held to be entitled to seek a writ petition to carry a writ. We, therefore, find that the view taken in this regard does not warrant any interference. Even otherwise also it is clear from the adjudication of various points above that the appellants have no case on merits. It is not necessary for us to give reasons in further detail, keeping in view the fact that the learned Single Judge himself has taken great pains in delivering such an elaborate and well reasoned judgement and all the facts have been marshalled and submissions have been meticulously dealt with, we find ourselves in full agreement with the learned Single Judge.

34. This Appeal has no merits and the same is hereby dismissed with no order as to costs.

(M.R. Calla, J.)

(Ravi R. Tripathi, J.)
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